

12:52:59 1 IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
2 MARSHALL DIVISION

TRANSCRIPT OF JURY TRIAL

## AFTERNOON SESSION

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

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## 01:11:06 1 P R O C E E D I N G S

01:11:06 2 (Jury out.)

01:11:07 3 COURT SECURITY OFFICER: All rise.

01:11:09 4 THE COURT: Be seated, please.

01:18:55 5 Defendants, who is your next witness?

01:19:03 6 MR. MUELLER: Your Honor, our next witness is  
01:19:04 7 going to be Ray Perryman. May I raise one issue before we  
01:19:07 8 call him, Your Honor?

01:19:08 9 THE COURT: You may.

01:19:08 10 MR. MUELLER: So as I understand from Plaintiffs,  
01:19:10 11 with respect to their rebuttal case, which will be coming  
01:19:13 12 soon, they intend to play -- or are considering playing, I  
01:19:18 13 should say, at the conclusion of it a portion of the  
01:19:22 14 deposition of a Sophie Vrzic. I'm probably mispronouncing  
01:19:25 15 her name, but I think it's V-r-i-c-i-c. As context, this  
01:19:29 16 is a --01:19:30 17 THE COURT: Let me stop you. Is this something we  
01:19:34 18 can take up after you've close your case-in-chief?

01:19:37 19 MR. MUELLER: Yes, Your Honor.

01:19:38 20 THE COURT: Then let's do that.

01:19:38 21 MR. MUELLER: Okay.

01:19:41 22 THE COURT: I don't want to delay the jury getting  
01:19:43 23 back in here.

01:19:44 24 MR. MUELLER: Understood.

01:19:45 25 THE COURT: All right. Let's bring the jury in.

01:19:48 1 COURT SECURITY OFFICER: All rise.

01:20:14 2 (Jury in.)

01:20:15 3 THE COURT: Welcome back, ladies and gentlemen.

01:20:17 4 Please have a seat.

01:20:19 5 Defendant, call your next witness.

01:20:22 6 MR. MUELLER: Thank you, Your Honor. We call

01:20:23 7 Dr. Ray Perryman. And Ms. Smith will conduct the

01:20:26 8 examination.

01:20:26 9 THE COURT: All right. Dr. Perryman, if you'll

01:20:40 10 come forward and be sworn, please.

01:20:43 11 (Witness sworn.)

01:20:44 12 THE COURT: Please come around and have a seat at

01:20:47 13 the witness stand.

01:20:49 14 THE WITNESS: Thank you, Your Honor.

01:20:54 15 THE COURT: Ms. Smith, you may proceed whenever

01:21:00 16 you're ready.

01:21:01 17 MS. SMITH: Thank you, Your Honor.

01:21:01 18 RAY PERRYMAN, DEFENDANT'S WITNESS, SWORN

01:21:01 19 DIRECT EXAMINATION

01:21:02 20 BY MS. SMITH:

01:21:02 21 Q. Good afternoon, Dr. Perryman. If you would, introduce

01:21:05 22 yourself to the jury.

01:21:06 23 A. Yes, ma'am. My name is Raymond Perryman. I grew up

01:21:10 24 over in Lindale, and I live now in Odessa and work in Waco.

01:21:16 25 And that's because 28 years ago, I married the mayor of

01:21:19 1 Odessa, and so I moved. And I continue my business in  
01:21:24 2 Waco. And I'm the father of five and the grandfather of  
01:21:29 3 four with one on the way.

01:21:30 4 Q. Dr. Perryman, if you would, share your educational  
01:21:34 5 background with the jurors.

01:21:37 6 A. Yes, ma'am. After graduating from Lindale, I attended  
01:21:40 7 Baylor University, and I received a Bachelor's degree in  
01:21:43 8 mathematics at Baylor. And then I attended Rice University  
01:21:47 9 down in Houston, and received a Ph.D. in economics.

01:21:50 10 Q. And where do you work now, doctor?

01:21:53 11 A. Now I am the president of a company called The Perryman  
01:22:00 12 Group. It's -- it's an economic consulting company that I  
01:22:03 13 manage.

01:22:03 14 Q. And when you say economic consulting company, how long  
01:22:06 15 you have been doing that?

01:22:07 16 A. Well, the company itself was incorporated about 35  
01:22:10 17 years ago. I've been doing economic consulting for  
01:22:14 18 something over 40 years.

01:22:15 19 Q. I understand you also have some teaching experience?

01:22:19 20 A. Yes, ma'am, I do. I spent 17 years at Baylor  
01:22:23 21 University and five years at Southern Methodist University.  
01:22:25 22 I still have some honorary titles and do a little work at  
01:22:30 23 two or three universities.

01:22:31 24 During my time at Baylor, I was -- spent 10 years  
01:22:35 25 as the Herman Brown Professor of Economics, which was an

01:22:39 1 endowed research position. And the last five years I was  
01:22:40 2 there, my title was University Professor, which is a title  
01:22:43 3 that, to my understanding, only two people at Baylor have  
01:22:46 4 had in the past -- since 1845. As long as Baylor's been  
01:22:52 5 there.

01:22:52 6 THE COURT: Dr. Perryman, it's good to have you  
01:22:54 7 appear in court in front of me again. I remember the last  
01:22:58 8 time you appeared, you spoke very fast, and you're right  
01:23:03 9 back where you were at the last trial. Please slow down,  
01:23:07 10 sir.

01:23:07 11 THE WITNESS: Yes, Your Honor.

01:23:08 12 THE COURT: Thank you very much.

01:23:08 13 Ms. Smith, please continue.

01:23:10 14 MS. SMITH: Thank you, Your Honor.

01:23:11 15 Q. (By Ms. Smith) Dr. Perryman, have you received any  
01:23:13 16 awards for your work in economic and financial consulting?

01:23:17 17 A. I have. I -- I've been very fortunate in that regard.

01:23:20 18 I received a number over the years. Just -- just a few  
01:23:20 19 that are memorable to me.

01:23:23 20 Lindale started an award for their distinguished  
01:23:26 21 alumnus a few years ago, and they were kind enough to give  
01:23:30 22 me that the first year. And then I received awards, alumni  
01:23:36 23 awards, from both Baylor University and Rice University for  
01:23:39 24 work I had done.

01:23:40 25 I received a number of academic research awards,

01:23:40 1 and one that meant a lot to me, back in 2012, the Texas  
01:23:45 2 Legislative Conference named me the Texan of the Year,  
01:23:47 3 which was -- which I've done a lot of work on economic  
01:23:50 4 growth and development here in Texas. So that one meant a  
01:23:53 5 lot to me.

01:23:54 6 I've won one that the Cesar Chavez Foundation gave  
01:23:54 7 me for humanitarian work, which is something I've done a  
01:24:00 8 lot of work on, issues like hunger and poverty and child  
01:24:03 9 abuse and that sort of thing.

01:24:05 10 And then just this past year -- less than a year  
01:24:07 11 ago, I was given the lifetime achievement award by the  
01:24:14 12 International Economic Development Council, again, largely  
01:24:14 13 for developing economies primarily here in Texas.

01:24:19 14 Q. I understand, Doctor, even though you're a Texan, that  
01:24:22 15 the -- The New York Times has -- has given you an award as  
01:24:26 16 well. Is that correct?

01:24:26 17 A. Well, they haven't given me an award, but they did once  
01:24:27 18 call me the state's unofficial economist.

01:24:31 19 Q. A title, yes, Doctor.

01:24:32 20 Now, what kind of experience do you have in  
01:24:34 21 assessing patent licenses?

01:24:36 22 A. Quite a bit. I've been doing this for over 30 years.  
01:24:40 23 I have studied thousands and thousands of patents over that  
01:24:43 24 period of time, and done the economic analysis associated  
01:24:45 25 with those patents.

01:24:47 1 Q. And what experience do you have related to patent  
01:24:51 2 license negotiations?

01:24:53 3 A. Well, I never invented anything. I've never been in  
01:24:57 4 the room actually negotiating a patent license. I have  
01:25:00 5 helped a lot of companies that have patents to -- with  
01:25:04 6 their negotiations by valuing their patents or helping them  
01:25:07 7 structure their negotiations or things of that nature.

01:25:11 8 Q. If somebody came into the courtroom and said that Apple  
01:25:14 9 didn't have an expert with any experience in surveys, would  
01:25:18 10 that be right or wrong?

01:25:19 11 A. I believe that would be incorrect.

01:25:21 12 Q. Well, tell -- tell the jurors a little bit about your  
01:25:24 13 experience in surveys.

01:25:25 14 A. Sure. I've conducted hundreds of surveys, many of them  
01:25:29 15 dealing with -- with consumer products and issues. For  
01:25:32 16 years, I was the co-owner of a company called Metro Stats  
01:25:36 17 that did consumer surveys in many large cities around the  
01:25:43 18 country. I have done all of the underlying statistical  
01:25:46 19 work that goes into surveys. I've published extensively on  
01:25:50 20 that and received a number of awards for that work.

01:25:53 21 I have -- as I think Dr. Reed-Arthurs said  
01:25:57 22 yesterday, things like the unemployment rate and consumer  
01:26:01 23 price index are all based on big surveys. I've helped the  
01:26:05 24 U.S. Department of Labor and U.S. Department of Commerce in  
01:26:08 25 designing and advising on those surveys for about 30 years.

01:26:10 1 And then I actually created the Texas Consumer  
01:26:14 2 Price Index, which is also based on a large survey.  
01:26:16 3 Q. Dr. Perryman, how many times have you served as an  
01:26:21 4 expert on patent damages?  
01:26:22 5 A. Probably around 70 times, something like that, in  
01:26:28 6 litigation.  
01:26:28 7 Q. And have any of those cases involved patents claimed or  
01:26:33 8 declared to be essential?  
01:26:34 9 A. Yes, ma'am. I would say about 25 or so of those.  
01:26:37 10 Q. Dr. Perryman, are you being compensated for -- for your  
01:26:44 11 work in this case today?  
01:26:45 12 A. My company is, yes, ma'am.  
01:26:46 13 Q. Okay. And is that compensation dependent in any way  
01:26:50 14 dependent on the outcome of this case?  
01:26:51 15 A. No, ma'am, it's not.  
01:26:53 16 Q. In addition to -- to Apple -- or -- or maybe I'll say  
01:26:56 17 setting Apple aside, how many clients have you done work  
01:26:59 18 for, say, in the past five years?  
01:27:01 19 A. Probably 3- or 400, something like that.  
01:27:04 20 Q. And out of that 3- or 400, how many times did you work  
01:27:07 21 for Apple?  
01:27:08 22 A. Three times.  
01:27:09 23 MS. SMITH: Your Honor, I'd offer Dr. Perryman as  
01:27:13 24 an expert in financial, economic damages analysis,  
01:27:17 25 technology, and patent valuation.

01:27:19 1 THE COURT: Is there objection?

01:27:20 2 MR. SHEASBY: No objection, Your Honor.

01:27:22 3 THE COURT: Then the Court will recognize this

01:27:24 4 witness as an expert in those designated fields.

01:27:26 5 Please continue, Ms. Smith.

01:27:29 6 MS. SMITH: Thank you, Your Honor.

01:27:30 7 Q. (By Ms. Smith) Dr. Perryman, have you been here each

01:27:31 8 day of trial?

01:27:32 9 A. I have, yes, ma'am.

01:27:32 10 Q. Have you seen all the witnesses?

01:27:34 11 A. I have, yes, ma'am.

01:27:35 12 Q. And you saw that Apple actually used its time in trial

01:27:40 13 to call engineers to show it doesn't infringe. Did you see

01:27:42 14 that?

01:27:43 15 A. Yes, I did.

01:27:43 16 Q. How many witnesses is Apple calling on damages?

01:27:46 17 A. Just me.

01:27:47 18 Q. What do you understand about Apple's position on

01:27:52 19 whether or not it infringes?

01:27:53 20 A. Well, as -- as we've all heard throughout the week,

01:27:57 21 Apple feels very strongly that it does not infringe these

01:28:00 22 patents.

01:28:01 23 Q. And what is -- what is Plaintiffs' damage claim in this

01:28:05 24 case?

01:28:05 25 A. Over half a billion dollars, a little over \$500

01:28:10 1 million.

01:28:10 2 Q. So if Apple's engineers, all the witnesses, the -- the  
01:28:15 3 engineer witnesses that Apple's brought in, if they're  
01:28:18 4 right, why are you here?

01:28:20 5 MR. SHEASBY: Your Honor, I object to the  
01:28:21 6 misstatement of the record. Apple's engineers didn't give  
01:28:24 7 non-infringement opinions.

01:28:25 8 THE COURT: Overruled, Mr. Sheasby.

01:28:29 9 A. Well, I'm here because, obviously, you folks get to  
01:28:33 10 make the decision about whether or not there was  
01:28:34 11 infringement here, and if there -- if -- if you determine  
01:28:38 12 that there were, you -- you would need to get a perspective  
01:28:41 13 on what the -- the proper amount of compensation would be.

01:28:45 14 Q. (By Ms. Smith) And Dr. Perryman, what assumptions did  
01:28:47 15 you make on the issues of infringement and validity in  
01:28:52 16 preparing your analysis?

01:28:53 17 A. Well, as Mr. Kennedy said yesterday, all damage experts  
01:28:57 18 are required by law to assume, when we do our analysis,  
01:29:00 19 that the patents are valid and infringed, even though  
01:29:05 20 there's a lot of controversy about that, obviously, here  
01:29:07 21 this week.

01:29:08 22 Q. But if the patents are invalid or are not infringed,  
01:29:12 23 what would the damages be?

01:29:14 24 A. Well, it would be zero in that case.

01:29:16 25 Q. Thank you, Doctor.

01:29:20 1 Now, you were here when Mr. Kennedy testified,  
01:29:23 2 correct?

01:29:23 3 A. I was, yes, ma'am.

01:29:24 4 Q. Do you agree with Mr. Kennedy's conclusions?

01:29:27 5 A. Not at all, no, ma'am.

01:29:30 6 MS. SMITH: If we could start with DDX-11.43,

01:29:35 7 Mr. Lee. Thank you.

01:29:36 8 Q. (By Ms. Smith) Let's start with a infrastructure cost  
01:29:42 9 approach. What's that approach?

01:29:43 10 A. Well, that's one way that -- that Mr. Kennedy went  
01:29:46 11 about reporting to measure damages. And, basically, what  
01:29:51 12 he was saying was what it would cost -- or what you would  
01:29:55 13 have to pay the -- the carriers in order to make up for the  
01:29:59 14 loss in performance on their networks allegedly because of  
01:30:03 15 these -- not using these patents.

01:30:05 16 Q. And -- and what's wrong with that infrastructure cost  
01:30:08 17 approach?

01:30:08 18 A. Well, a number of things. First of all, I have -- I've  
01:30:13 19 been around a long time, and I did some pretty serious  
01:30:16 20 looking, and I've never seen any situation where that ever  
01:30:19 21 occurred in the real world. And I don't think --  
01:30:23 22 Mr. Kennedy, I think he testified yesterday he had never  
01:30:25 23 seen that, either.

01:30:26 24 The carriers want Apple on their network. Apple  
01:30:36 25 is the largest cell phone company in the United States.

01:30:39 1 They don't want a network out there where if you've got  
01:30:41 2 AT&T or Verizon, that they say, well, you can't be on it if  
01:30:44 3 you have Apple. So, there's no real way that Apple should  
01:30:48 4 pay them that or that they would ever ask Apple to them pay  
01:30:52 5 that. That -- that just wouldn't happen.

01:30:55 6 And then one other thing that bothered me a little  
01:30:56 7 bit, in the course of all these 40 years, I've done a lot  
01:30:59 8 of analysis of infrastructure projects, including cell  
01:31:03 9 towers and telecommunications infrastructure, but also  
01:31:08 10 highways and ports and airports and all sorts of things.

01:31:11 11 And the way Mr. Kennedy did his analysis was, it  
01:31:14 12 was like if you spent X percent more on infrastructure, you  
01:31:16 13 would get X percent more speed. And that's just not how  
01:31:21 14 infrastructure works.

01:31:21 15 If you spend 10 percent more on a highway, that  
01:31:26 16 doesn't mean you can drive 10 percent faster. There's all  
01:31:29 17 kinds of things that go into that, and there was no  
01:31:32 18 analysis at all of how the expenditures would translate.

01:31:36 19 And then another part of that is the -- these  
01:31:38 20 companies are constantly, all the time, spending money  
01:31:41 21 to -- to make their -- to make their systems better in any  
01:31:46 22 case. So I don't know how you would ever sort anything  
01:31:49 23 like that out, even if it did somehow make sense.

01:31:52 24 Q. How long -- how long -- remind me, how long have you  
01:31:56 25 been -- have you been involved in valuing patents?

01:31:59 1 A. Over 30 years.

01:32:00 2 Q. And you actually said that you'd never heard of the  
01:32:03 3 infrastructure cost approach?

01:32:04 4 A. No, ma'am, not at all.

01:32:07 5 Q. Okay.

01:32:07 6 MS. SMITH: If we could see Mr. Kennedy's trial  
01:32:10 7 trans -- trial testimony on Day 3. It's, I believe,  
01:32:17 8 Page 46, Lines 12 through 16.

01:32:19 9 Q. (By Ms. Smith) Does that look familiar, Dr. Perryman?

01:32:21 10 A. Yes, it does.

01:32:22 11 Q. What did Mr. Kennedy have to say about this new  
01:32:26 12 approach?

01:32:26 13 A. Well, when he was asked if he had seen anyone do this,  
01:32:32 14 he also said not a specific payment. So, obviously, he  
01:32:36 15 hadn't seen this occur, either.

01:32:38 16 Q. Now, moving away from the cost infrastructure approach,  
01:32:41 17 he took a second approach, did he not?

01:32:43 18 A. He did, yes, ma'am.

01:32:45 19 Q. And what is that?

01:32:46 20 A. It was a survey approach where he took the survey that  
01:32:49 21 Dr. Reed-Arthurs did and tried to turn that into a method  
01:32:53 22 of calculating losses.

01:32:55 23 Q. And that's, as the jurors will remember, the survey  
01:32:59 24 where she made up the hypothetical phones?

01:33:02 25 A. That's correct.

01:33:02 1 Q. All right. What's wrong with the survey approach?

01:33:04 2 A. Well, there's -- there's several things. I could go

01:33:06 3 into a lot of the -- the technical aspects of it. But to

01:33:10 4 kind of just summarize it, if you want to reflect what a

01:33:13 5 consumer is going to do in a survey, you have to try to

01:33:16 6 replicate the consumer experience as much as you can, make

01:33:20 7 it seem like they're actually doing what they're doing.

01:33:23 8 As you mentioned, there were some problems in some

01:33:25 9 of the phones that were created, but you recall,

01:33:30 10 Mr. Blevins, when he was testifying, he told us that when

01:33:31 11 Apple brings out a new phone, they like to have a lot of

01:33:34 12 new features in it, kind of wow factors, new things, that

01:33:37 13 sort of thing.

01:33:38 14 That technique, as she admitted yesterday, can

01:33:40 15 only handle about seven or eight things, and then it starts

01:33:43 16 to break down. So you can't possibly put all of those

01:33:45 17 features in there, and, in fact, she didn't.

01:33:48 18 But I think a bigger problem is that I can't ask

01:33:52 19 you how much you'd pay for something if you don't know what

01:33:56 20 it is.

01:33:56 21 Q. Well, and, Dr. Perryman, I may stop you there and have

01:34:00 22 you take a look at DDX-11.47.

01:34:03 23 A. Yes, ma'am.

01:34:04 24 Q. What are -- are these some notes? Do you recognize

01:34:07 25 these as notes from -- from the survey?

01:34:10 1 A. I do, yes, ma'am.

01:34:10 2 Q. And what are we seeing here?

01:34:13 3 A. Well, when she was taking notes about the survey --  
01:34:16 4 which she talked about some of them yesterday -- one thing  
01:34:19 5 she said was most of the ones from her focus group didn't  
01:34:20 6 know exactly what speed their phones operated but  
01:34:23 7 understood that speeds varied based on location and network  
01:34:27 8 availability and knew what it was good enough.

01:34:29 9 Q. So they didn't know what speed their phone operated  
01:34:32 10 out, but they were basically being given a test over it?

01:34:35 11 A. Right, yeah. They were basically being asked: How  
01:34:37 12 much would you pay for more speed?

01:34:39 13 If I could take just one second and give a pretty  
01:34:41 14 simple example about this.

01:34:42 15 Q. Please.

01:34:43 16 A. Since I've been here in Marshall, Baylor University  
01:34:46 17 asked me to do a little program for some alumni over the --  
01:34:46 18 over a -- electronically. And it turned out because of  
01:34:52 19 where I was, I had to do it over the cellular network. And  
01:34:54 20 they were -- they wanted to make sure I had enough  
01:34:57 21 bandwidth to do it. So they tested my device here on the  
01:35:00 22 network here in Marshall. It turned out I had three times  
01:35:03 23 as much as I needed.

01:35:05 24 And so I did the -- the -- the speech. Everything  
01:35:08 25 went fine. But had I taken a 50 percent cut -- in other

01:35:11 1 words, instead of having three times as much, I only had  
01:35:14 2 one and a half times as much -- I would have never known  
01:35:16 3 the difference. And the only reason I know the difference  
01:35:19 4 is because they tested it. I mean, I didn't know what the  
01:35:21 5 speed was, and I think that's the --

01:35:21 6 MR. SHEASBY: Your Honor --

01:35:23 7 A. -- situation we --

01:35:26 8 MR. SHEASBY: -- I object.

01:35:24 9 A. -- find ourselves in.

01:35:25 10 MR. SHEASBY: This is technical commentary. He's  
01:35:30 11 not a technical witness. He shouldn't be able to be giving  
01:35:32 12 this type of testimony.

01:35:32 13 MS. SMITH: Your Honor, I think he was -- he was  
01:35:34 14 merely giving factual testimony about his experience.

01:35:37 15 MR. SHEASBY: And that's --

01:35:38 16 THE COURT: I understand, but this doesn't relate  
01:35:42 17 directly to his opinions. I'm not going to strike what  
01:35:44 18 he's testified to, but I will direct you to move on,  
01:35:47 19 Ms. Smith.

01:35:47 20 MS. SMITH: Of course, Your Honor. Thank you.

01:35:50 21 Q. (By Ms. Smith) Dr. Perryman, is there anything wrong  
01:35:52 22 with -- with how Mr. Kennedy used the survey results?

01:35:55 23 A. Yes, ma'am. To start with, if you can't determine what  
01:36:02 24 people -- how much more people would pay for it, then you  
01:36:05 25 certainly can't use it to -- to multiply it by something

01:36:08 1 else to get to a damage number because -- if you don't have  
01:36:13 2 reliable information to start with.

01:36:15 3 So that's -- that's just the biggest kind of  
01:36:17 4 structural problem with it. He was multiplying two things  
01:36:20 5 together, and one of them he didn't really know the answer  
01:36:22 6 to. So -- so you can't -- you can't do that.

01:36:24 7 And -- and so that was -- that's -- that's the --  
01:36:27 8 the biggest problem that I saw with it.

01:36:30 9 In addition to that, I'm aware that -- that Apple  
01:36:35 10 does not use any techniques like this in pricing its  
01:36:40 11 products. In fact, as -- as Dr. Reed-Arthurs gave us a  
01:36:44 12 slide and showed us, when Apple brings out a new phone,  
01:36:44 13 they price it at the same level where they were pricing the  
01:36:50 14 previous phone, whether it has a different type of cellular  
01:36:53 15 functionality or not.

01:36:54 16 That's just -- that's just not how Apple goes  
01:36:57 17 about doing this. So I -- there were -- there were a lot  
01:37:00 18 of problems with -- with the way that -- that Mr. Kennedy  
01:37:02 19 did that.

01:37:03 20 Q. Doctor, you've been in the courtroom, and there's been  
01:37:06 21 a lot of talk about Qualcomm. Do you recall that?

01:37:09 22 A. Yes, ma'am.

01:37:10 23 Q. All right.

01:37:11 24 MS. SMITH: Your Honor, may I approach the flip  
01:37:12 25 board, please?

01:37:13 1 THE COURT: You may.

01:37:14 2 MS. SMITH: Thank you, Your Honor.

01:37:29 3 I need to seal the courtroom, please.

01:37:30 4 THE COURT: All right. Based on counsel's

01:37:33 5 request, I'll order the courtroom sealed at this time.

01:37:35 6 Those of you not present not subject to the protective

01:37:39 7 order in this case or aligned with Defendant, Apple, should

01:37:41 8 excuse yourselves until the courtroom is unsealed and the

01:37:47 9 public is invited to return.

01:37:49 10 MR. SHEASBY: PanOptis is in compliance, Your

01:37:52 11 Honor.

01:37:52 12 THE COURT: Thank you.

01:37:53 13 (Courtroom sealed.)

01:37:53 14 (This portion of the transcript is sealed

01:37:53 15 and filed under separate cover as

01:37:54 16 Sealed Portion No. 17.)

01:37:54 17 (Courtroom unsealed.)

02:39:49 18 THE COURT: What's the anticipated length of this

02:39:52 19 witness, Mr. Mueller?

02:39:53 20 MR. MUELLER: Just over three minutes.

02:39:55 21 THE COURT: All right. Proceed.

02:39:57 22 (Videoclip played.)

02:39:57 23 QUESTION: Would you state and spell your name for

02:40:01 24 the record, please.

02:40:02 25 ANSWER: Richard Misiag. R-i-c-h-a-r-d.

02:40:06 1           QUESTION: Mr. Misiag, where did you work  
02:40:10 2 immediately before IPValue?  
02:40:11 3           ANSWER: At PanOptis.  
02:40:12 4           QUESTION: Did you hold a position of head of  
02:40:14 5 licensing for your entire tenure at PanOptis?  
02:40:16 6           ANSWER: I believe that answer is yes.  
02:40:21 7           QUESTION: Mr. Misiag, we have marked as Exhibit 4  
02:40:24 8 a copy of U.S. Patent No. 8,019,332. Do you see that?  
02:40:28 9           ANSWER: Yes.  
02:40:28 10          QUESTION: Mr. Misiag, we have marked as Exhibit 5  
02:40:39 11 a copy of U.S. patent number 8,102,833. Do you see that?  
02:40:43 12          ANSWER: Yes.  
02:40:43 13          QUESTION: Have you ever seen this patent before?  
02:40:45 14          ANSWER: Again, it's possible I've seen it. I  
02:40:49 15 just don't recollect seeing it.  
02:40:52 16          QUESTION: You have no recollection of having read  
02:40:54 17 this patent, correct?  
02:40:55 18          ANSWER: I don't have any recollection of reading  
02:40:58 19 this patent.  
02:40:59 20          QUESTION: And you have no information or  
02:41:01 21 knowledge about this patent, correct?  
02:41:02 22          ANSWER: Not that I recall.  
02:41:06 23          QUESTION: Mr. Misiag, we have marked as Exhibit 6  
02:41:11 24 a copy of U.S. Patent No. 8,385,284. Do you see that?  
02:41:14 25          ANSWER: Yes.

02:41:14 1           QUESTION: Have you ever seen this patent before?

02:41:21 2           ANSWER: I mean, the -- the diagram looks

02:41:27 3 familiar, but it looks familiar to a thousand other

02:41:29 4 patents, so I don't recollect this specific patent.

02:41:32 5           QUESTION: You have no rec -- recollection of

02:41:34 6 having read this patent, correct?

02:41:35 7           ANSWER: I -- I don't recall.

02:41:37 8           QUESTION: And you have no information or

02:41:42 9 knowledge about this patent, correct?

02:41:42 10          ANSWER: I have no information about this patent

02:41:46 11 that I recall.

02:41:46 12          QUESTION: And you don't recall having seen this

02:41:50 13 or any of the prior patents that I've shown you, correct?

02:41:54 14          ANSWER: Yeah, across the boards. I -- I may have

02:41:56 15 seen the patents. I just don't recall, and I have no

02:41:59 16 recollection of the -- the content or technology in the

02:42:03 17 patents.

02:42:03 18          QUESTION: Mr. Misiag, we've marked as Exhibit 8 a

02:42:06 19 copy of U.S. Patent No. 9,001,774. Do you see that?

02:42:11 20          ANSWER: Yes.

02:42:11 21          QUESTION: Do you have any recollection of having

02:42:15 22 seen this patent before?

02:42:17 23          ANSWER: Again, I may have seen it. I just don't

02:42:21 24 have any recollection of it specifically.

02:42:22 25          QUESTION: Do you have any recollection of

02:42:25 1 having -- having read this patent before?

02:42:27 2 ANSWER: I -- I don't have any recollection of  
02:42:30 3 reading this patent.

02:42:31 4 QUESTION: Do you have any information or  
02:42:33 5 knowledge about this patent?

02:42:34 6 ANSWER: I don't have any information or knowledge  
02:42:41 7 of this patent other than, again, that it is a patent.

02:42:45 8 QUESTION: Okay. So to sum up, you have no  
02:42:48 9 information or knowledge about any of the patents that  
02:42:50 10 we've marked as Exhibits 3 through 8, correct?

02:42:54 11 ANSWER: Yeah. I -- I -- I just don't recollect  
02:42:58 12 any knowledge across the boards on these specific patents.

02:43:01 13 QUESTION: And you're not aware of any advantages,  
02:43:07 14 improvements, or benefits of any of the patents we've  
02:43:12 15 marked as Exhibits 3 through 8, correct?

02:43:15 16 ANSWER: I'm not familiar with the patents, nor do  
02:43:19 17 I recollect any specific information with -- with respect  
02:43:23 18 to the improvements on these patents.

02:43:26 19 (Videoclip ends.)

02:43:29 20 THE COURT: Does that complete this witness by  
02:43:31 21 deposition?

02:43:32 22 MR. MUELLER: Yes, Your Honor. And Apple rests.

02:43:34 23 THE COURT: All right. I assume all of that  
02:43:36 24 deposition time is chargeable to the Plaintiffs since I  
02:43:38 25 didn't hear the voice change at all?

02:43:41 1 MR. MUELLER: That's correct, Your Honor.

02:43:42 2 THE COURT: Okay.

02:43:43 3 MR. SHEASBY: Chargeable to the Defendants, Your

02:43:45 4 Honor.

02:43:45 5 THE COURT: I'm sorry. I meant the Defendants. I

02:43:47 6 was looking at Mr. Mueller. I misspoke.

02:43:49 7 All right. Ladies and gentlemen of the jury,

02:43:51 8 we're going to take a short recess at this time. I'm going

02:43:54 9 to ask you to close your notebooks and leave them in your

02:43:57 10 chairs. I'm going to ask you to follow all my

02:43:59 11 instructions, and we'll be back relatively soon to

02:44:02 12 continue.

02:44:02 13 The jury is excused for recess.

02:44:05 14 COURT SECURITY OFFICER: All rise.

02:44:05 15 (Jury out.)

02:44:07 16 THE COURT: Be seated, please.

02:44:29 17 Mr. Sheasby, you asked me in chambers this morning

02:44:39 18 to let you know when you had an hour and 20 minutes

02:44:42 19 remaining. You have one hour and 22 minutes remaining. So

02:44:47 20 consider yourself notified.

02:44:48 21 MR. SHEASBY: Thank you, Your Honor.

02:44:49 22 THE COURT: All right. Mr. Mueller, you have nine

02:44:52 23 minutes remaining.

02:44:52 24 MR. MUELLER: Thank you, Your Honor.

02:44:53 25 THE COURT: I assume Plaintiff, after the recess,

02:44:55 1 will call its first rebuttal witness; is that correct?

02:44:57 2 MR. SHEASBY: That's correct, Your Honor.

02:44:58 3 THE COURT: And what -- what should I anticipate  
02:45:00 4 as far as Plaintiffs' rebuttal case?

02:45:01 5 MR. SHEASBY: It's going to be Professor  
02:45:05 6 Madisetti, Professor Mahon, and then Ms. Sophia Vrzic, who  
02:45:13 7 I understand Defendants have an objection to.

02:45:15 8 THE COURT: Is that true, Mr. Mueller?

02:45:17 9 MR. MUELLER: It is true, Your Honor.

02:45:18 10 THE COURT: All right. Well, I'm not aware of the  
02:45:24 11 substance of that objection. Let's take a short recess,  
02:45:29 12 and in about 10 minutes, lead and local counsel may meet me  
02:45:32 13 in chambers, and we'll see what the problem is.

02:45:33 14 MR. MUELLER: Your Honor, may I say one more thing  
02:45:35 15 before we leave? The slide that -- the Samsung license  
02:45:37 16 with PanOptis, Your Honor, that did include one of the  
02:45:39 17 patents-in-suit -- actually, originally two of the  
02:45:41 18 patents-in-suit. So the reason why there was no -- no  
02:45:44 19 notation on that slide is because it did, in fact, cover  
02:45:46 20 one of the patents-in-suit.

02:45:48 21 I just say that for Your Honor's benefit as a bit  
02:45:51 22 of an aside, but that was the reason.

02:45:55 23 THE COURT: My recollection was there were two  
02:45:57 24 slides from this morning, and that's what I thought the  
02:45:59 25 second slide was. But unless you feel strongly that that

02:46:03 1 needs to be corrected with the jury --

02:46:04 2 MR. MUELLER: No.

02:46:05 3 THE COURT: -- we'll just leave it where it is.

02:46:07 4 MR. MUELLER: That's right, Your Honor.

02:46:08 5 THE COURT: Anything further before we recess?

02:46:10 6 MR. SHEASBY: No, Your Honor.

02:46:11 7 THE COURT: All right. I'll see lead and local in

02:46:13 8 chambers in 10 minutes.

02:46:14 9 We stand in recess.

02:46:18 10 COURT SECURITY OFFICER: All rise.

02:51:32 11 (Recess.)

02:54:05 12 (Jury out.)

02:54:06 13 COURT SECURITY OFFICER: All rise.

02:54:07 14 THE COURT: Be seated, please.

03:16:22 15 Mr. Sheasby, is Plaintiff prepared to go forward

03:16:29 16 with its rebuttal case?

03:16:31 17 MR. SHEASBY: We are, Your Honor.

03:16:32 18 THE COURT: All right. Let's bring in the jury,

03:16:35 19 please.

03:16:35 20 COURT SECURITY OFFICER: All rise.

03:16:36 21 (Jury in.)

03:16:37 22 THE COURT: Please be seated.

03:17:05 23 All right. Ladies and gentlemen, as you heard,

03:17:11 24 the Defendants have closed their case-in-chief -- they have

03:17:14 25 rested their case-in-chief.

03:17:16 1           We'll now move to the final component of the  
03:17:20 2 evidence, and that is the Plaintiffs' rebuttal case.

03:17:21 3           Mr. Sheasby, Plaintiffs should call their first  
03:17:26 4 rebuttal witness at this time.

03:17:27 5           MR. SHEASBY: Your Honor, Plaintiffs call  
03:17:31 6 Professor Vijay Madisetti.

03:17:32 7           THE COURT: All right. Professor Madisetti, if  
03:17:34 8 you'll return to the witness stand. I remind you, sir, you  
03:17:40 9 remain under oath.

03:17:41 10          THE WITNESS: Yes, Your Honor.

03:17:45 11          THE COURT: Mr. Pollinger, are you going to  
03:17:45 12 examine this witness?

03:17:45 13          MR. POLLINGER: Yes, Your Honor.

03:17:45 14          THE COURT: All right. You may proceed when  
03:17:49 15 you're ready.

03:17:49 16          MR. POLLINGER: Before I start, Your Honor, we're  
03:17:51 17 going to very quickly get into confidential information of  
03:17:54 18 third parties. I believe we should seal the court.

03:17:56 19          THE COURT: Then based on that request, I'll order  
03:17:58 20 the courtroom sealed and direct those present not subject  
03:18:00 21 to the protective order to excuse themselves until the  
03:18:05 22 courtroom is reopened and unsealed.

03:18:05 23          (Courtroom sealed.)

03:18:05 24          (This portion of the transcript is sealed  
03:18:05 25 and filed under separate cover as

03:18:10 1 Sealed Portion No. 18.)

03:18:10 2 (Courtroom unsealed.)

04:35:32 3 MR. MUELLER: Your Honor, may I set up a placard?

04:35:37 4 THE COURT: We're going to -- I'm going to send

04:35:40 5 the jury out before we start the redirect --

04:35:43 6 MR. MUELLER: Thank you.

04:35:43 7 THE COURT: I'm sorry, the cross.

04:35:45 8 All right. Ladies and gentlemen, I need to cover

04:35:47 9 a couple very small housekeeping matters with counsel. I

04:35:50 10 know it's late in the day. I don't expect to keep you here

04:35:55 11 a whole lot longer, but I do need you to step into the jury

04:36:00 12 room for a minute so I can cover this with them outside

04:36:00 13 your presence.

04:36:02 14 If you will, just leave your notebooks in your

04:36:03 15 chairs, follow all my instructions, including not to

04:36:06 16 discuss the case among yourselves, and we'll back in here

04:36:11 17 shortly.

04:36:11 18 The jury --

04:36:11 19 COURT SECURITY OFFICER: All rise.

04:36:12 20 THE COURT: The jury is excused to the jury room.

04:36:15 21 (Jury out.)

04:36:17 22 THE COURT: Mr. Sheasby, you have 15 minutes total

04:36:34 23 time remaining.

04:36:35 24 MR. SHEASBY: Thank you, Your Honor.

04:36:36 25 THE COURT: Mr. Mueller, you have four minutes --

04:36:40 1 MR. MUELLER: Thank you, Your Honor.

04:36:38 2 THE COURT: -- total time remaining.

04:36:40 3 All right. If you'll just remain standing, I'll

04:36:44 4 ask the courtroom deputy [sic] to bring the jury back in.

04:36:48 5 MR. MUELLER: And while that's happening,

04:36:50 6 Your Honor, may I set up this placard?

04:36:52 7 THE COURT: You may set up while they're coming

04:36:54 8 in, yes.

04:36:55 9 MR. MUELLER: Yes, Your Honor.

04:37:36 10 (Jury in.)

04:37:36 11 THE COURT: Thank you, ladies and gentlemen.

04:37:40 12 We'll proceed with cross-examination by the Defendant.

04:37:43 13 Mr. Mueller, you may proceed.

04:37:43 14 CROSS-EXAMINATION

04:37:46 15 BY MR. MUELLER:

04:37:46 16 Q. Good afternoon, Dr. Mahon.

04:37:49 17 A. Good afternoon.

04:37:50 18 Q. Dr. Mahon, Mr. Sheasby made a reference to Apple's paid

04:37:51 19 expert for the '284 patent. Do you recall that?

04:37:51 20 A. Yes, he did.

04:37:52 21 Q. Now, sir, you're a paid expert for the Plaintiffs in

04:37:55 22 this case, right?

04:37:56 23 A. Yes, I am.

04:37:56 24 Q. There's nothing wrong with that, right?

04:37:58 25 A. No, sir.

04:37:58 1 Q. Now, I only have three minutes left or four minutes  
04:38:01 2 left, so if you could do your best to answer my questions  
04:38:04 3 and I'll do my best to make them as clear as possible,  
04:38:08 4 okay?

04:38:08 5 A. Sounds good.

04:38:09 6 Q. Now, sir, you agree with me that you don't infringe a  
04:38:13 7 table in a patent, correct?

04:38:13 8 A. Correct.

04:38:15 9 Q. You infringe a claim --

04:38:17 10 MR. MUELLER: May I approach the placard, Your  
04:38:19 11 Honor?

04:38:20 12 THE COURT: You may.

04:38:21 13 Q. (By Mr. Mueller) You infringe a claim, right, sir?

04:38:23 14 A. That is correct.

04:38:23 15 Q. This is the '284 patent, Claim 1. Do you see that,  
04:38:27 16 sir?

04:38:27 17 A. I do.

04:38:27 18 Q. You made references with Mr. Sheasby to the LTE  
04:38:30 19 standard table, right, sir?

04:38:32 20 A. I did, yes.

04:38:33 21 Q. You talked about places where values changed, right,  
04:38:37 22 sir?

04:38:37 23 A. Yes, I did.

04:38:38 24 Q. The claim itself doesn't refer to changed values, does  
04:38:43 25 it? The word "change" is in the -- nowhere in that claim?

04:38:46 1 A. The claim language does not include that word.

04:38:50 2 Q. Now, sir, you understand that Dr. Buehrer takes the

04:38:53 3 view that this right here is the second subset of values,

04:38:59 4 what I'm pointing to in the redundancy version column?

04:39:01 5 A. That's what he's pointing to.

04:39:03 6 Q. And he says the TBS index column to the left of it is

04:39:07 7 the first subset of values, right, sir?

04:39:09 8 A. Yes.

04:39:10 9 Q. And the claim requires that the first subset be bigger

04:39:14 10 than the second subset, right?

04:39:15 11 A. The claim limitation language says that the first

04:39:19 12 subset is more values than the second subset.

04:39:22 13 Q. This column contains 32 values, correct, sir?

04:39:25 14 A. Yes, it does.

04:39:25 15 Q. This contains 29, right, sir?

04:39:27 16 A. Yes, it does.

04:39:29 17 Q. What's bigger, 32 or 29?

04:39:30 18 A. The value 32 is bigger than the value of 29.

04:39:35 19 Q. Now, sir, there's been a lot of talk in this case about

04:39:38 20 essentiality, right?

04:39:39 21 A. Yes.

04:39:40 22 MR. MUELLER: Let's pull up Trial Transcript

04:39:43 23 Page 529 to 530.

04:39:44 24 Q. (By Mr. Mueller) And this is Mr. Rodermund.

04:39:47 25 You saw his testimony to the jury, by deposition?

04:39:50 1 A. I did.

04:39:51 2 Q. Now, did you see at the end where it says: So a  
04:39:55 3 device -- certain device definitely does not have to  
04:39:58 4 implement all essential patents which are in the LTE  
04:40:02 5 standard?

04:40:03 6 Do you see that, sir?

04:40:04 7 A. I do see that.

04:40:05 8 Q. And the way to know whether a particular product is  
04:40:08 9 using a particular patent is we compare the patent to the  
04:40:12 10 product, right, sir?

04:40:13 11 A. Yes. I did that.

04:40:16 12 Q. And in this case, that requires looking at the Intel  
04:40:19 13 and Qualcomm chips in the Apple products, right, sir?

04:40:23 14 A. That's exactly what I did, yes.

04:40:26 15 Q. And we can agree that Ms. Dwyer didn't do that, did  
04:40:30 16 she, sir?

04:40:30 17 A. Ms. Dwyer analyzed the claim elements.

04:40:32 18 Q. Ms. Dwyer never looked at a single Intel chip or a  
04:40:37 19 single Qualcomm chip, correct?

04:40:38 20 A. Not that I know of.

04:40:40 21 Q. Now, sir, let's talk about the '774 patent. That  
04:40:44 22 requires receiving a processing parameter from a base  
04:40:47 23 station, right?

04:40:47 24 A. Yes, it does.

04:40:48 25 Q. Now, Dr. Wells took the stand this morning and he said

04:40:50 1 that what happens in the Apple products is the products  
04:40:54 2 themselves create a processing parameter through a  
04:40:57 3 five-step process. Do you recall that, sir?  
04:40:58 4 A. He does claim that, yes.  
04:41:00 5 Q. Now, does receiving mean the same thing as  
04:41:04 6 constructing?  
04:41:05 7 A. Does receiving mean the same thing as constructing?  
04:41:09 8 No.  
04:41:13 9 Q. Now, in this case, Apple has called Mr. Tony Blevins to  
04:41:16 10 the stand, correct?  
04:41:16 11 A. Yes, they have.  
04:41:17 12 Q. He's an engineer by training, right?  
04:41:20 13 A. That's what I understand, yes.  
04:41:21 14 Q. And we also called two chip engineers who work on the  
04:41:25 15 actual chips and code at issue in this case, correct?  
04:41:28 16 A. Yes, you did.  
04:41:28 17 Q. The Plaintiffs called one fact witness, Mr. Brian  
04:41:31 18 Blasius, who hadn't even read the patents in full, right,  
04:41:34 19 sir?  
04:41:34 20 A. We called one fact witness.  
04:41:36 21 Q. And, sir, you never spoke to a single inventor  
04:41:39 22 yourself, did you?  
04:41:39 23 A. I -- not that I know of, no.  
04:41:42 24 Q. Thank you, sir. No further questions.  
04:41:46 25 THE COURT: Do you have redirect, Mr. Sheasby?

04:41:48 1 MR. SHEASBY: Just briefly, Your Honor.

04:41:50 2 THE COURT: Do you need to use this demonstrative?

04:41:53 3 MR. SHEASBY: I would like it up, Your Honor, with

04:41:55 4 your permission.

04:41:56 5 THE COURT: That's fine.

04:41:56 6 DIRECT EXAMINATION

04:41:57 7 BY MR. SHEASBY:

04:41:57 8 Q. So let's turn to the '283 (sic) patent.

04:41:59 9 MR. SHEASBY: And, Mr. Huynh, can I have the --

04:42:02 10 the -- the rebuttal slides from Dr. Mahon, and if I could

04:42:07 11 have -- I think it's the second to the last slide. I

04:42:22 12 believe it's PDX -- keep -- keep going.

04:42:32 13 Keep going.

04:42:35 14 Actually, I believe it's -- 36 is the number,

04:42:40 15 Mr. Huynh. Oh, keep going.

04:42:42 16 Stop right there. Perfect.

04:42:44 17 Q. (By Mr. Sheasby) Counsel for Apple just said tables

04:42:50 18 don't infringe patents, fair?

04:42:52 19 A. Fair.

04:42:53 20 Q. This is the source code, on the left-hand side, from

04:42:57 21 Apple's design, fair?

04:42:59 22 A. Fair.

REDACTED BY ORDER OF THE COURT

04:43:02 23 Q. [REDACTED]

04:43:07 24 [REDACTED]

04:43:11 25 [REDACTED]

04:43:16 1 [REDACTED]

04:43:17 2 [REDACTED]

04:43:24 3 [REDACTED]

04:43:29 4 MR. MUELLER: Your Honor, I think we're going  
04:43:30 5 to -- if we're going to get back into the code, we're going  
04:43:34 6 to have to seal the courtroom. This is Qualcomm  
04:43:36 7 information.

04:43:37 8 THE COURT: All right. Then I'll order the  
04:43:40 9 courtroom sealed at this time and direct all of those  
04:43:42 10 present not subject to the protective order to excuse  
04:43:47 11 themselves.

04:43:48 12 (Courtroom sealed.)

04:43:48 13 (This portion of the transcript is sealed.

04:43:48 14 and filed under separate cover as  
04:43:49 15 Sealed Portion No. 19.)

04:49:50 16 (Courtroom unsealed.)

04:49:52 17 THE COURT: Ladies and gentlemen of the jury, you  
04:49:52 18 have now heard all the evidence in this case. And it is 10  
04:49:58 19 minutes until 5:00 p.m. on a Friday.

04:50:01 20 I have good news for you. First of all, I'm about  
04:50:05 21 to let you go home. I have even better news for you. You  
04:50:08 22 are not going to have to be back by 8:30 Monday morning.  
04:50:12 23 There are things I must take up with counsel outside of  
04:50:15 24 your presence as required by the law and the rules of  
04:50:17 25 procedure, and those things can't be covered by me between

04:50:22 1 now and Monday morning with you being ready to go at 8:30.

04:50:27 2 So I'm going to need some time with the parties and the  
04:50:31 3 lawyers Monday morning.

04:50:32 4 I'm going to ask you be in the jury room assembled  
04:50:36 5 and ready to go by 10:30 Monday morning. No objections, I  
04:50:41 6 gather?

04:50:42 7 Now, I want you to understand this is not a  
04:50:47 8 science, it's an art. And I can't know with certainty how  
04:50:50 9 long it's going to take for me to cover these things that I  
04:50:53 10 will not go into with you right now.

04:50:55 11 That means I might be through before 10:30 and  
04:51:00 12 waiting on you, and it means I might not be through by  
04:51:05 13 10:30 and you be waiting on me. We're just going to have  
04:51:07 14 to, as my father used to say, play it by ear. But you do  
04:51:11 15 not have to be here at 8:30 Monday morning. I'd like you  
04:51:15 16 assembled and ready to go by 10:30.

04:51:17 17 And then we will proceed at that point as soon as  
04:51:20 18 I'm finished with these matters I have to take up with  
04:51:23 19 counsel and the parties outside of your presence.

04:51:26 20 I'm going to ask you to take your notebooks and  
04:51:31 21 leave them on the table in the jury room. I'm going to  
04:51:33 22 remind you, we are getting close to the end of this  
04:51:38 23 process. It would be a travesty if you were to violate any  
04:51:42 24 of my instructions and jeopardize this entire process.

04:51:44 25 So please, do not discuss this case with anyone,

04:51:44 1 do not communicate about it with anyone, do not discuss it  
04:51:48 2 among yourselves, do not attempt to do any research of any  
04:51:52 3 kind, and follow all the other instructions I've given you  
04:51:56 4 about your conduct throughout the trial.

04:51:57 5 Please travel safely. I hear some thunder  
04:52:01 6 outside, and I will see you Monday morning at 10:30.

04:52:05 7 The jury is excused.

04:52:06 8 COURT SECURITY OFFICER: All rise.

04:52:07 9 (Jury out.)

04:52:20 10 THE COURT: Please be seated.

04:52:23 11 Mr. Sheasby, you left 11 minutes on the table, and  
04:52:32 12 Mr. Mueller, you left 11 seconds on the table.

04:52:35 13 It's my practice, as I told you during pre-trial,  
04:52:41 14 to take up matters under Rule 50(a) after all the evidence  
04:52:48 15 has been presented, which is where we are now.

04:52:51 16 Here's what I intend to do with regard to motions  
04:52:54 17 under Rule 50(a). You may prepare a written version of any  
04:52:58 18 motion under Rule 50(a) that you think is appropriate,  
04:53:02 19 Plaintiff and Defendant, and file it on the docket not  
04:53:05 20 later than noon on Sunday.

04:53:08 21 I will review them Sunday afternoon, and I will  
04:53:11 22 hear very, very brief argument Monday morning and rule on  
04:53:13 23 your motions under Rule 50(a). But I will have the full  
04:53:17 24 benefit of your written filings from Sunday afternoon  
04:53:20 25 forward. That should save us time Monday morning.

04:53:23 1           After I've completed the very brief argument and  
04:53:26 2 the ruling on the motions, then we'll proceed to conduct an  
04:53:30 3 informal charge conference in chambers. I have your latest  
04:53:35 4 submitted, jointly-suggested charge form. I will be going  
04:53:41 5 over that, as well. We'll discuss that and the verdict in  
04:53:43 6 this case after I've ruled on matters urged under Rule  
04:53:50 7 50(a).

04:53:50 8           After that, I will make any adjustments I think  
04:53:56 9 are appropriate, and generate a printed copy of the final  
04:53:59 10 charge and verdict form. I will give you an opportunity to  
04:54:02 11 review it, and then I will conduct a formal charge  
04:54:04 12 conference on the record where either side can lodge any  
04:54:07 13 objections they think necessary and appropriate to what I  
04:54:12 14 have given you as the final version of those documents.

04:54:15 15           After the final charge -- or, excuse me, the  
04:54:19 16 formal charge conference, I'll at that time be prepared to  
04:54:24 17 bring in the jury, give them my final instructions, and  
04:54:27 18 allow counsel to present their closing arguments.

04:54:31 19           Are there questions from anybody?

04:54:33 20           MR. SHEASBY: Your Honor, I want to instantiate an  
04:54:39 21 agreement that Mr. Mueller and I believe had, on the  
04:54:42 22 record.

04:54:42 23           We're going to exchange, not just our  
04:54:44 24 demonstratives, but any trial transcript call-outs in  
04:54:47 25 advance of -- on Sunday to ensure that all disputes are

04:54:51 1 taken up with the Court before --

04:54:58 2 THE COURT: Well, as we discussed in chambers,  
04:55:00 3 Mr. Sheasby, you and Mr. Mueller and I and other counsel in  
04:55:03 4 the case, my direction is that you exchange everything  
04:55:06 5 possible so if there is any possibility you have a dispute,  
04:55:10 6 I can know about it and resolve it before you start your  
04:55:12 7 closing arguments.

04:55:13 8 I consider the closing arguments before a jury  
04:55:15 9 after a lengthy jury trial like this to be the most serious  
04:55:19 10 and solemn part of the proceeding, and the proceeding  
04:55:22 11 itself is inherently solemn and serious. So the last thing  
04:55:27 12 I want are objections raised in the middle of a closing  
04:55:30 13 argument from the opposing counsel.

04:55:31 14 If you have any issues after you've made that  
04:55:35 15 fulsome disclosure to each other, I'll take those up Monday  
04:55:39 16 before we start with the final jury instructions, all  
04:55:41 17 right?

04:55:41 18 MR. SHEASBY: Thank you, Your Honor.

04:55:42 19 THE COURT: Any other questions?

04:55:43 20 MR. MUELLER: Just one, Your Honor. After the  
04:55:46 21 Rule 50 arguments on Monday morning, may I go finish  
04:55:51 22 preparations for the closing argument, and my colleagues,  
04:55:56 23 Mr. Selwyn and Ms. Amadi, will participate in the charge  
04:56:02 24 conference?

04:56:02 25 THE COURT: Mr. Mueller, if you would like to have

04:56:02 1 an associate on your trial team present the argument on the  
04:56:02 2 motions under Rule 50(a) and attend the informal charge  
04:56:06 3 conference while you prepare for closing arguments, you're  
04:56:08 4 free to do that.

04:56:09 5 MR. MUELLER: Thank you, Your Honor.

04:56:09 6 THE COURT: The same goes for you, Mr. Sheasby.

04:56:12 7 MR. SHEASBY: Thank you, Your Honor.

04:56:13 8 THE COURT: As long as it's adequately staffed,  
04:56:15 9 lead counsel doesn't have to be present at either the 50(a)  
04:56:18 10 motions or the informal charge conference, as I know you'll  
04:56:23 11 be preparing for those closing arguments.

04:56:25 12 MR. SHEASBY: Thank you, Your Honor.

04:56:26 13 MR. MUELLER: Thank you, Your Honor.

04:56:26 14 THE COURT: Mr. Baxter.

04:56:28 15 MR. BAXTER: What time Monday, Your Honor?

04:56:32 16 THE COURT: You need to be here and ready to go by  
04:56:34 17 regular time. If there are any disputes that developed  
04:56:37 18 with regard to your closings, I need them by 7:00 o'clock,  
04:56:43 19 and I'll meet with you at 7:30, and we're going to get on  
04:56:47 20 the record early because we will -- we will have to work  
04:56:50 21 hard to be ready to go on all of this by midmorning, and I  
04:56:54 22 don't want the jury waiting on us any longer than  
04:56:56 23 necessary.

04:56:56 24 MR. SHEASBY: Your Honor, with your permission,  
04:56:59 25 may I ask Mr. Mueller one question, because I think it will

04:57:02 1 inform the process on Monday?

04:57:06 2 THE COURT: Let's go off the record.

04:57:08 3 (Off-the-record discussion.)

04:57:09 4 THE COURT: All right. We're back on the record.

04:57:18 5 Anything further before we recess until Monday

04:57:20 6 morning?

04:57:20 7 MR. SHEASBY: Nothing from Plaintiffs, Your Honor.

04:57:23 8 MR. BAXTER: And I take it Monday morning, we

04:57:25 9 probably need to put in the last of the exhibits,

04:57:28 10 Your Honor?

04:57:28 11 THE COURT: Yes, sir. We'll do that before I

04:57:30 12 bring in the jury.

04:57:30 13 MR. BAXTER: Thank you.

04:57:31 14 THE COURT: And you need to go over that with each

04:57:33 15 other and make sure that both sides are straight on that.

04:57:35 16 MR. SHEASBY: Thank you, Your Honor.

04:57:36 17 THE COURT: All right. Without anything further,

04:57:38 18 we stand in recess until Monday morning.

04:57:41 19 MR. MUELLER: Thank you, Your Honor.

04:57:42 20 COURT SECURITY OFFICER: All rise.

04:57:46 21 (Recess.)

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1 CERTIFICATION  
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4 I HEREBY CERTIFY that the foregoing is a true and  
5 correct transcript from the stenographic notes of the  
6 proceedings in the above-entitled matter to the best of my  
ability.

7  
8 /S/ Shelly Holmes \_\_\_\_\_  
9 SHELLY HOLMES, CSR, TCRR  
OFFICIAL REPORTER  
State of Texas No.: 7804  
10 Expiration Date: 12/31/20

8/7/2020  
Date

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